

Appl. No. 09/996,029
Amdt. dated February 3, 2004
Reply to Office Action of September 24, 2003

REMARKS/ARGUMENTS

This Amendment is submitted in response to the final Office Action mailed September 24, 2003. At that time, claims 1, 4, 6-21 and 29 were pending in the application. In the Office Action, the Examiner allowed claims 1, 4, and 6-15. However, claims 16-21 and 29 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,918,898 to Wallner et al. (hereinafter "Wallner"). By this paper claims 16 and 29 have been amended. Accordingly, claims 1, 4, 6-21 and 29 are presented for reconsideration by the Examiner.

Applicant would like to thank Examiner David R. Dunn for conducting a telephonic interview on December 10, 2003 with Applicant's attorneys Craig Metcalf (Reg. No. 31,398) and Matthew S. Bethards (Reg. No. 51,466). Rejected claims 16-21 and 29 were discussed, specifically in light of Wallner. Applicant proposed to amend claims 16 and 29 to recite that the sleeve "expands radially" instead of reciting that the sleeve is "capable of expanding radially." The Examiner agreed that the proposed amendment appeared to distinguish over Wallner. The Examiner indicated that the proposed amendment would be entered and the claims allowed subject to an updated search.

REJECTION OF CLAIMS 16-21 AND 29 UNDER 35 U.S.C. §102(b)

The Examiner rejected claims 16-21 and 29 under 35 U.S.C. §102(b) as being anticipated by Wallner. *See* Office Action, page 2. The Applicant respectfully traverses this rejection.

It is well settled that a claim is anticipated under 35 U.S.C. § 102(b) only if "each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." MPEP §2131, citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As a result of this paper, claims 16-21 and 29 include the limitation that the sleeve expands radially to form an

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exhaust passage when exhaust gas impinges against it. Such a limitation is not taught or disclosed by Wallner and as such, Wallner does not anticipate these claims under §102(b).

Wallner discloses a tubular diffuser (100c) formed from one piece of sheet metal. *See* col. 7, lines 36-39; Figures 6 and 7. The edges of the diffuser side walls (236, 246) overlap, forming a seam (248). *See* col. 7, lines 60-62; Figure 7. A diffuser chamber (254) exists between the seam (248) and the inflator (40c). *See* col. 8, lines 4-6; Figure 7. The Examiner suggests that the diffuser (100c) is "capable of" expanding radially to form an exhaust passage under a force of impinging exhaust gas "because any material will expand under a sufficient amount of force." *See* Office Action, page 2.

However the diffuser of Wallner will not expand radially *to form an exhaust passage* as claimed in the present application. Wallner does not teach that an exhaust passage is formed, let alone radial expansion of the diffuser sleeve, upon the application of impinging exhaust gas. Even if an inflator could produce a force strong enough to expand the material of the diffuser of Wallner, it does not necessarily follow that an exhaust passage will be formed. Consequently, Wallner does not provide an enabling disclosure of a diffuser sleeve expanding radially to form an exhaust passage.

Furthermore, the diffuser of Wallner is designed to *prevent* expansion of the diffuser walls, particularly at the seam. According to Wallner, the seam (248) is spot welded or otherwise secured. *See* col. 7, lines 62-63; col. 9, lines 1-2, 20. Securing the seam through welding prevents expansion of the sleeve to form an exhaust passage. Therefore, Wallner does not disclose every limitation recited in claims 16-21 and 29, and consequently, cannot anticipate under §102(b). Withdrawal of this rejection is respectfully requested.

Applicant respectfully asserts that claims 16-21 and 29 are patentably distinct from the cited reference, and requests that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

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Respectfully submitted,



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09/996,029	11/19/2001	Bradley W. Smith	14140	2046

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EXAMINER

DUNN, DAVID R

ART UNIT

PAPER NUMBER

3616

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/998,029

Applicant(s)

SMITH, BRADLEY W. SW

Examiner

David Dunn

Art Unit

3818

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 708.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1, 4 and 6-15.

Claim(s) objected to: _____.

Claim(s) rejected: 16-21 and 29.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).
10. ☐ Other: _____

David Dunn
Primary Examiner
Art Unit: 3818